

A balancing act: liberty and security

Recommendations of the attorney general to restrict civil liberties don't apply to aliens alone, they apply to American citizens, too.

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Guest columnist



When a U.S. military plane collided with a Chinese fighter plane over international waters earlier this year and was forced to land in China, we feared for the safety of our airmen and women.

Although diplomatic efforts eventually secured their release, what if the Chinese had tried the captured Americans on espionage charges in secret, chosen their lawyers, and eavesdropped on "confidential" communications with their counsel?

What if the accused were detained indefinitely, without trial? Suppose they were denied access to the evidence against them and they were convicted under unspecified rules of evidence and standard of proof?

What if the death penalty was imposed by a non-unanimous panel of military officers, without possibility of review by civilian courts?

This shocking scenario is exactly the system Attorney General John Ashcroft and President George W. Bush have in mind for foreigners in the United States who are suspected of being or helping terrorists. The plan as presently outlined is un-American, an affront to our fundamental values.

The attorney general, who will be

grilled by a Senate panel today, has a lot to explain. Why did the president issue these new rules without consulting Congress or the American people?

Just a few weeks ago, the president asked for and got expanded legal authority for the fight against terrorism from a nearly unanimous Congress. But not a word about military tribunals or suspension of lawyer-client confidentiality was raised. These are difficult times, but what evidence shows that basic constitutional safeguards are in fatal conflict with our security needs?

The weak spots revealed by the events of Sept. 11 were investigative and intelligence failures, not an inability to obtain justice where evidence of wrongdoing is found.

Several of the hijackers had violated their visas, yet no effort had been made to detain them. At least one was being sought by federal officials at the time, but although he boarded the doomed plane using his real name, neither the airline nor the Federal Aviation Administration had been alerted to look for him.

On the other hand, with no compromise of traditional safeguards or breach of security, prosecutors obtained convictions of the perpetra-

tors of the 1993 bombing of the World Trade Center and the American embassy bombings in Africa.

To be sure, in times of war, presidents have cut constitutional corners. In hindsight, however, we view these acts as shortsighted.

During the Civil War, Abraham Lincoln suspended the writ of habeas corpus, the ancient right to court review of arbitrary governmental actions. President Franklin Delano

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Roosevelt allowed the military to detain 100,000 law-abiding Japanese-Americans in internment camps for the duration of World War II. Decades later, Congress formally apologized and authorized the payment of reparations.

Just as this debate is mostly about "us" and our values, it is also important to recognize that the president's orders will affect a broader "them" than many realize.

The suspension of the attorney-client protection, available without court approval, applies to American citizens as well as aliens. Suspects in any international terrorist plot aimed at Americans, not just those connected with al-Qaida, can be tried in secret military tribunals with truncated safeguards.

Indeed, the military tribunal order

applies not just to terrorist leaders captured abroad, but also to the 18 million aliens living in this country. Since the executive branch alone will decide which suspects will be subjected to this system, there will be no check on whether the net has been cast too widely.

Moreover, the directives provide a frightening model that would sanction similar treatment of Americans by other countries. In addition, as John F. Kennedy was prepared to say in Dallas on the day he was assassinated: "A nation can be no stronger abroad than she is at home. Only an America which practices what it preaches about equal rights and social justice will be respected by those whose choice affects our future."

We face an unprecedented threat that calls for effective responses, including identifying and trying terrorists in our midst. But to create a new criminal justice system by executive fiat risks repeating the mistakes of the past.

If we need a different tribunal and a different process to determine the appropriate balance between security and liberty in these cases, Congress should debate the alternatives and the American people should be heard. Judicial review is essential in any process to check potential abuses in individual cases.

Only by respecting the constitutional framework that has served us well for more than two centuries will we successfully meet the challenges of our time.

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